

1 SCOTT GOODSELL, ESQ., BAR NO.  
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9  
10 *Counsel for Plaintiffs*  
11 *Harbans and Manjit Grewal*

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13  
14 UNITED STATES BANKRUPTCY COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 IN RE: } Case No. 10-60800 ASW  
18 HARBANS S. GREWAL AND MANJIT K. } Chapter 7  
19 GREWAL } Adversary Pro. No. 11-05067 ASW  
20 Debtors. } STIPULATION FOR LEAVE TO FILE  
21 } FIRST AMENDED COMPLAINT;  
22 } EXTEND DISCOVERY CUTOFF; AND  
23 } ORDER  
24 HARBANS S. GREWAL AND MANJIT K. }  
25 GREWAL, } Plaintiff,  
26 }  
27 v. }  
28 SANTA CRUZ COUNTY BANK AND DOES }  
1-10, } Defendants.

29  
30 IT IS HEREBY STIPULATED by and between Plaintiffs and Defendant, through  
31 their respective counsel of record, that Plaintiffs may file their First Amended Complaint,  
32 a copy of which is attached hereto as Exhibit A, and that the Court may enter an Order  
33 accordingly.

34  
35 STIPULATION FOR LEAVE TO FILE FIRST  
36 AMENDED COMPLAINT; AND ORDER  
37 ADVERSARY PRO. NO. 11-05067 ASW

1           The proposed First Amended Complaint differs from plaintiffs' Complaint in that  
2 it includes allegations for violations of the discharge order pursuant to 11 U.S.C §524.

3           Further, the parties hereby stipulate to extend discovery from August 31, 2012 to  
4 September 28, 2012.

5  
6 DATED: AUGUST 9, 2012

ROBERTSON & LEWIS  
WM. THOMAS LEWIS, ESQ.

7  
8 BY  
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WM. THOMAS LEWIS, ESQ.  
ATTORNEYS FOR DEFENDANT,  
SANTA CRUZ COUNTY BANK

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11  
12 DATED: AUGUST 9, 2012

CAMPEAU GOODSELL SMITH

13  
14 BY  
15

KARI S. BOWYER  
ATTORNEYS FOR PLAINTIFFS,  
HARBANS AND MANJIT GREWAL

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STIPULATION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT; AND ORDER  
ADVERSARY PRO. NO. 11-05067 ASW

**EXHIBIT "A"**

1 SCOTT GOODSELL, ESQ., BAR NO.  
2 WILLIAM HEALY, ESQ., BAR NO.  
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6 *Counsel for Plaintiffs*  
7 *Harbans and Manjit Grewal*

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9  
10 UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11 IN RE:

12 HARBANS S. GREWAL AND MANJIT K.  
13 GREWAL

14 Debtors.

Case No. 10-60800 ASW

Chapter 7

Adversary Pro. No. 11-05067 ASW

FIRST AMENDED COMPLAINT FOR  
VIOLATION FOR:

1. 11 U.S.C. §362;
2. 11 U.S.C. §524; AND
3. CONVERSION OF PROPERTY

Honorable Arthur S. Weissbrodt

17 HARBANS S. GREWAL AND MANJIT K.  
18 GREWAL,

19 Plaintiff,

20 v.

21 SANTA CRUZ COUNTY BANK AND DOES 1-  
10,

22 Defendants.

25  
26 For their Complaint (the "Complaint") against the Defendant, Plaintiffs  
27 aver as follows:

CAMPBELL GOODSELL SMITH  
A Law Corporation  
San Jose, California

## PARTIES

1. Plaintiffs Harbans S. Grewal and Manjit K. Grewal (collectively "Plaintiffs") are individuals of the age of majority residing in the County of Santa Clara.
2. Defendant Santa Cruz County Bank is a banking institution with its principal place of business in the County of Santa Cruz.
3. Plaintiffs do not know the true names of defendants Does 1 through 10, inclusive, and therefore sue them by those fictitious names.
4. Plaintiffs are informed and believe, and on the basis of that information and belief allege, that each of those defendants was in some manner legally responsible for the events and happenings alleged in this complaint and for plaintiff's damages.
5. The names, capacities, and relationships of Does 1 through 10 will be alleged by amendment to this complaint when they are known.
6. Plaintiffs are informed and believe, and on the basis of that information and belief allege, that at all times mentioned in this complaint, defendants were the agents and employees of their codefendants.

## JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §157(b).
8. This Adversary Proceeding is a core proceeding within the meaning of 28 U.S.C. §§ 157(b).
9. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).
10. This Adversary Proceeding is commenced pursuant to, among other sections, Rule 7001(1) and (7) of the Federal Rules of Bankruptcy Procedure. Further, this Adversary Proceeding is brought pursuant to, among other sections, 11 U.S.C. §§105, 362, and 365.

FACTS COMMON TO ALL CLAIMS

11. The Plaintiffs filed a voluntary petition for relief under Chapter 7 of the  
Bankruptcy Code on October 18, 2010.
12. Prior to filing for bankruptcy, the Plaintiffs owned a corporation known  
as American Gas and Auto, Inc. ("American").
13. American operated an automobile repair business in Santa Clara County  
located at 8385 Monterey Rd ("Premises").
14. Defendant lent money to American, and Plaintiffs personally guaranteed  
the loan to purchase the Premises.
15. Defendant is scheduled as an unsecured creditor being owed \$847,471.00.
16. In the underlying bankruptcy, the Defendant did not claim secured  
status.
17. The Plaintiffs claimed exemptions pursuant to Cal. Code Civ. Pro.  
§§703.140(b) (6) and 703.140(b) (1).
18. The Defendant did not challenge the exemptions.
19. The Plaintiffs stored many personal items on the Premises.
20. Many of the items were used by the Plaintiffs as part of American's car  
repair business.
21. The items include:
  - a. 1993 Gold BMW 740il;
  - b. BMW engine on rollers;
  - c. BMW rims with old tires
  - d. MBZ rims with old tires
  - e. Water cooler
  - f. Small refrigerator
  - g. Dynamometer (in ground)
  - h. Evaporator machine next to smog machine
  - i. Big cooling Fan

- j. Miscellaneous parts
- k. Parts cleaner (blue box)
- l. Used black hoses @ nozzles (on shelf)
- m. Grinder
- n. Personal clothing & blue towels
- o. Books, and desktop computer located in the shop
- p. Engine Scope
- q. Smog Machine
- r. Grease Dispenser
- s. Oil
- t. Mop Bucket
- u. O-Rings & Quarter Pins (small plastic boxes)
- v. Drain Pans (3)
- w. Parts Cart
- x. Battery Water Container ; and
- y. Funnels (misc.)

- 22. The Plaintiffs did not contribute these items to the business.
- 23. The Defendant did hold a Deed of Trust on the real property used by American and a UCC lien on American's tangible property.
- 24. The Defendant foreclosed on the Premises used by American and the UCC lien.
- 25. Despite actual knowledge of the bankruptcy, Deborah Crawford ("Crawford"), an officer of the Defendant locked the Plaintiffs out of the building.
- 26. The action was particularly egregious as the Crawford exercised self-help blatantly violating California Law.
- 27. Specifically, the Defendant did not obtain a judgment of possession in

state court before the lockout.

28. Through their counsel, the Plaintiffs attempted to resolve the violation of  
3 state law by contacting Crawford, but she terminated the conversation.

4 29. On October 4, 2010, Counsel for the Plaintiffs wrote to the Defendant to  
5 confirm the conversation.

6 Dear Ms. Crawford:

7 I write to confirm the following facts regarding the unlawful actions of  
8 you and your employer.

- 9 1. After completing foreclosure of the property, you personally  
10 instructed a locksmith to change the locks on the premises;
- 11 2. You changed the locks prior to recording a deed;
- 12 3. You did not serve a three day notice to vacate the premises as  
13 required by Cal. Code Civ. Pro. § 1161a;
- 14 4. You did not file an unlawful detainer proceeding and instead used  
15 self-help to gain access to the premises;
- 16 5. When you forcibly entered the premises; you found personal property  
17 demonstrating that the premises were occupied.
- 18 6. I called you last Friday and specifically advised that you and your  
19 client violated the law by changing the locks;
- 20 7. You called me back today, and I specifically asked whether your  
21 employer filed an unlawful detainer to obtain possession of the premises;
- 22 8. You refused to answer; and
- 23 9. When I pressed the issue, you hung up on me.

24 30. In the correspondence, Counsel also demanded return of the Plaintiffs'  
25 property on the Premises.

26 31. Counsel also demanded the return of property belonging to a former  
27 American employee named Roberto Martinez.

28 32. The Defendant did not deny any of the facts confirmed in the October 4,

1           2010 correspondence.

2       33.      Crawford allowed Mr. Martinez to retrieve his items and noted the  
3           property released on a copy of the October 4, correspondence.

4       34.      Thereafter, Harbans Grewal appeared at the Premises to retrieve the  
5           Plaintiffs' property.

6       35.      At that time, Crawford presented a "Waiver of Liability and Hold  
7           Harmless Agreement" ("Agreement") to Mr. Grewal.

8       36.      Despite the documented efforts to obtain release of the items, the  
9           Agreement falsely states that Plaintiffs "abandoned" their property on the  
10          Premises.

11       37.      The Agreement also contains a covenant not to sue.

12       38.      When Mr. Grewal refused to sign the Agreement, Crawford refused to  
13          release the Plaintiffs' property.

14       39.      Plaintiffs' counsel documented this fact in correspondence dated October  
15          12, 2010.

16           My client still does not have his property and is leaving the country for  
17          one month tomorrow. Your client is conditioning release of the items on  
18          dropping a nonexistent lawsuit and signing a release. I reiterate my offer.  
19          Today, the bank can immediately turn over the property listed in my  
prior correspondence to Mr. Grewal and Roberto Garcia.

20           Alternatively, my client will give the bank a full release provided it  
21          releases the previously mentioned items as well as these: (1) Grinder; (2)  
22          Smog machine; (3) Personal clothing; (4) Books; and (5) desktop computer  
located in the shop.

23       40.      The Defendant's counsel responded to the demand and advised that the  
Plaintiffs could retrieve their property.

24           While the bank has no duty to return the items in the attachment, and  
25          has always acted properly, the bank is willing to return those items to  
26          Mr. Grewal. Mr. Grewal should deal with Ms. Crawford directly to  
27          coordinate a time to retrieve these items. He has her contact information  
already.

1       41.     Despite the assertion to the contrary, the Defendant did act improperly  
2              and had a duty to return the Plaintiffs' property.  
3       42.     The Defendant did not return the property, and then conditioned return  
4              upon proof that the Plaintiffs' actually owned their property.  
5       43.     Since it willfully violated the automatic stay and exercised self help in  
6              violation of state law, the Defendant attempted to justify its conduct by  
7              claiming that the items actually belonged to American or became fixtures.  
8       44.     For example, one of the most valuable items taken by the Defendant is a  
9              smog machine.  
10      45.     The smog machine also includes a dynamometer which is basically two  
11              large rollers allowing a vehicle's wheels to spin during a smog test.  
12      46.     It sits in a trench, so the rollers are level with the floor.  
13      47.     In that way, a vehicle can be driven onto the rollers for the test.  
14      48.     While the dynamometer sits in a trench, it is not in any way attached to  
15              the ground.  
16      49.     On Schedule B, Line 29, the Plaintiffs listed the following personal  
17              property, "Automotive equipment including wheel balancer and smog machine."  
18      50.     Prior to incorporating American on March 19, 2004, the Plaintiffs doing  
19              business as Grewal Shell purchased the smog machine through a financed lease  
20              on May 21, 2003 for \$26,500.00.  
21      51.     The Plaintiffs are now operating a new automotive business in Santa  
22              Clara County and cannot perform smog tests without the dynamometer.  
23      52.     In response to a final demand, the Defendant claimed that it owned the  
24              dynamometer and conditioned return of other property upon proof of ownership.  
25      53.     Their counsel wrote.  
26  
27              Before proceeding any further, please have Mr. Grewal provide whatever  
28              evidence he has that the items claimed in his most recent enumeration of  
            claimed items are actually owned by him.

With respect to the smog machine, the bank continues to assert that same either now owned by the bank by reason of the bank's foreclosure of its UCC lien or same is a fixture and was thus foreclosed by the bank's real property filing, or Mr. Grewal has defrauded the bank by providing materials to the bank to establish assets in a controlled corporate debtor prior to the bank's August 2007 loan, when he secretly claimed such assets as his own.

54. Notably, the Defendant did not assert ownership of the dynamometer in the Plaintiffs' bankruptcy.
55. With respect to the allegations of fraud, the Plaintiffs never provided a list of business assets to the Defendant that included the items sought herein, and it did not object to the Defendants' discharge or the dischargeability of the debt.
56. The Plaintiffs received a discharge on January 19, 2011.

FIRST CLAIM FOR RELIEF  
Damages for Violation of 11 U.S.C. § 362

57. Plaintiff incorporates the averments of the Paragraphs 1-56.
58. Section 362(a) of the Bankruptcy Code prohibits, among other things, any acts to exercise control over property of the bankruptcy estate.
59. The items listed in ¶ 21 of this complaint were property of the estate until the Plaintiffs' discharge.
60. Despite actual knowledge of the Plaintiffs' bankruptcy and the automatic stay, the Defendant utilized self help, entered the Premises without obtaining a judgment of possession, and took possession of the property.
61. Thereafter, it conditioned release of the items upon execution of a release by the Plaintiffs.
62. When the Plaintiffs refused to execute the release, the Defendant refused to release the property.
63. Since the Defendant retained bankruptcy counsel in this matter prior to the issuance of the discharge, it undoubtedly received appropriate advice

1                         regarding the automatic stay as well as the requirement of asserting its claim  
2                         in the bankruptcy.

3                 64.         Thus, the Defendant's conduct was both intentional and malicious.

4                 65.         As a result of the Defendant's conduct, Plaintiffs suffered actual  
5                         damages, including costs and attorney's fees in an amount to be determined at  
6                         trial.

7                 66.         Given the egregious nature of the Defendant's conduct, it is also liable to  
8                         the Plaintiffs for punitive damages.

9  
10                         SECOND CLAIM FOR RELIEF  
11                         Damages for Violation of the Discharge Order 11 U.S.C. §524

12                 67.         Plaintiffs incorporate the averments of Paragraphs 1-66 above.

13                 68.         On January 1, 2011, Plaintiffs received their discharge. However,  
14                         Defendants have failed and continue to fail to return property listed and  
15                         exempted in the bankruptcy schedules.

16                 69.         Defendant Santa Cruz County Bank and all of the Doe Defendants are  
17                         willfully violating the Discharge Order and the discharge injunction under 11  
18                         U.S.C. § 524.

19                 70.         As a result of the Defendant's conduct, Plaintiffs suffered actual  
20                         damages, including costs and attorney's fees in an amount to be determined at  
21                         trial.

22                 71.         Given the egregious nature of the Defendant's conduct, it is also liable to  
23                         the Plaintiffs for punitive damages.

24  
25                         THIRD CLAIM FOR RELIEF  
26                         Conversion

27                 72.         Plaintiff incorporates the averments of the Paragraphs 1-56.

28                 73.         After it unlawfully entered the Premises without obtaining a judgment of

1 possession, the Defendant took possession of the Plaintiffs' property and  
2 converted the same for its own use.

3 74. Despite repeated demand, the Defendant has refused to release the  
4 property to the Plaintiffs.

5 75. As a direct and proximate result of Defendant's actions, Plaintiffs have  
6 lost, and will continue to lose, profits from the used of the smog machine and  
7 other items in an amount to be determined at trial.

8 76. Plaintiffs are entitled to an award of the value of the property taken, with  
9 interest, and other damages in an amount to be proven at trial.

10 77. In addition, or in the alternative, Plaintiffs are entitled to damages and  
11 repossession of the converted property.

12 78. In addition, or in the alternative, Plaintiffs are entitled to restitution of  
13 the Defendant's ill-gotten gains.

14 79. Plaintiffs will elect remedies at trial.

15 80. The aforementioned acts of the Defendant were willful, wanton,  
16 malicious, and oppressive, were undertaken with the intent to defraud, and  
17 justify the awarding of exemplary and punitive damages.

18 WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor  
19 against the Defendant for:

- 20 1. Compensatory damages suffered by the Plaintiffs;
- 21 2. Restoration of their property or the value thereof;
- 22 3. Damages for loss of the use of the property;
- 23 4. Costs and attorney's fees incurred by the Plaintiffs as a result of the  
24 deprivation;
- 25 5. Punitive damages;
- 26 6. Costs of these proceedings; and
- 27 7. Any relief available under the facts asserted herein.

1 CAMPEAU GOODSELL SMITH  
2 A Law Corporation  
3 San Jose, California

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9  
10 Dated: August 9, 2012

11 CAMPEAU GOODSELL SMITH  
12 A Law Corporation

13 By: /s/ Kari Bowyer  
14 Kari S. Bowyer  
15 Attorneys for Plaintiff

16 First Amended Complaint

17 11

1 SCOTT GOODSELL, ESQ., BAR NO.  
2 WILLIAM HEALY, ESQ., BAR NO.  
3 KARI BOWYER, ESQ., BAR NO. 257033  
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6 *Counsel for Plaintiffs*  
7 *Harbans and Manjit Grewal*

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11 NORTHERN DISTRICT OF CALIFORNIA

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22 GREWAL, }  
23 Plaintiff, }  
24 V. }  
25 SANTA CRUZ COUNTY BANK AND DOES) }  
26 1-10, }  
27 Defendants. }

28 ORDER

29 Having considered the foregoing Stipulation of the parties, and good cause  
30 appearing therefrom,

2

STIPULATION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT; AND ORDER  
ADVERSARY PRO. NO. 11-05067 ASW

1           IT IS HEREBY ORDERED that the foregoing Stipulation is approved and that  
2 Plaintiffs are granted leave to file their First Amended Complaint, a copy of which is  
3 attached to the Stipulation as Exhibit A. The First Amended Complaint shall be deemed  
4 filed as of the date of this Order. Defendants shall have thirty (30) days from the date of  
5 service of this Order to respond to the First Amended Complaint.

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7           IT IS FUTHER ORDERED that discovery deadline cutoff is now September 28,  
8 2012.

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STIPULATION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT; AND ORDER  
ADVERSARY PRO. NO. 11-05067 ASW